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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/764,822	01/26/2004	Cheryl Vause	999450-0379	6912

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FOLEY & LARDNER LLP
150 EAST GILMAN STREET
P.O. BOX 1497
MADISON, WI 53701-1497

EXAMINER	
NELSON JR, MILTON	

ART UNIT	PAPER NUMBER
3636	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/764,822	VAUSE ET AL.	
	Examiner	Art Unit	
	Milton Nelson, Jr.	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 February 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-15 and 17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-15 and 17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *23 February 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Drawings

The objection to the drawings as not conforming with 37 CFR 1.84(m) and 37 CFR 1.121(d) has been overcome by Applicant's replacement drawings.

The objection to the drawings under 37 CFR 1.83(a) has been overcome by Applicant's amendment.

Claim Rejections - 35 USC § 112

The rejection of claim 16 under 35 U.S.C. 112, first paragraph, has been overcome by Applicant's amendment.

The rejection of claim 12 under 35 U.S.C. 112, second paragraph, has been overcome by Applicant's amendment.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 2, 4, 5, 8 and 10 are rejected under 35 U.S.C. 102(e) as being anticipated by Patton (6857649). Note the plurality of discipline condition indicators (36), storage location/cover (26), stop flag (one of 36), think flag (another of 36), go flag (a third one of 36), ties (29), chair (10), pockets (33).

Claims 17 and 19 are rejected under 35 U.S.C. 102(e) as being anticipated by Patton (6857649). Note the cover (26), pockets (33 and/or 32), flags (36) and ties (29).

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Oettinger et al (4306869). Note the plurality of discipline condition indicators (24, 25, 26), storage location (14), stop flag (indicator), think flag (yellow indicator), and go flag (green indicator).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (6857649) in view of Oettinger et al (4306869). The primary reference shows all claimed features of the instant invention with the exception of the flags being red, yellow and green. Note the discussion of the primary reference above.

Oettinger et al teaches configuring a learning aid with flags that are red, yellow and green. Note the discussion of Oettinger et al above.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the flags as red, yellow and green. This provides a structure that is simulative of a traffic signal (i.e. stop, caution or think, and go).

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (6857649) in view of Wilson (D257473). The primary reference shows all claimed features of the instant invention with the exception of the seating unit being a stool. Note the discussion of the primary reference above.

The secondary reference teaches configuring a seating unit as a stool.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the seating unit as a stool. Such provides the advantages of the primary reference in an environment that utilizes a stool.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (6857649) in view of Hahn (2350679). The primary reference shows all claimed features of the instant invention with the exception of the storage location being located on an inflatable chair. Note the discussion of the primary reference above.

The secondary reference teaches configuring a seating unit as an inflatable chair.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the seating unit as an inflatable chair. This provides the storage location as located on the inflatable chair. Such provides the advantages of the primary reference in an environment that utilizes an inflatable chair.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (6857649) in view of McDonald et al (5683137). The primary reference shows all claimed features of the instant invention with the exception of the electronic apparatus coupled to the storage location, the electronic apparatus having sounds programmed

therein that facilitate a disciplinary process. Note the discussion of the primary reference above.

The secondary reference teaches configuring an electronic apparatus (34) as coupled to a storage location (12), the electronic apparatus having sounds programmed therein that facilitate a disciplinary process.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding an electronic apparatus as coupled to the storage location wherein the electronic apparatus has sounds programmed therein that facilitate a disciplinary process. Such provides audible signals to the user of the device in order to enhance the teaching process.

Claims 11, 12, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (6857649) in view of Oettinger et al (4306869). The primary reference shows all claimed features of the instant invention with the exception of the flags being red, yellow and green (claim 11); and a pocket providing a storage location for help cards having discipline suggestions (claim 14). Note the plurality of discipline condition indicators (36), storage location/cover (26), stop flag (one of 36), think flag (another of 36), go flag (a third one of 36), ties (29), chair (10), pockets (33 and or 32).

Oettinger et al teaches configuring a learning aid with flags that are red, yellow and green. Oettenger et al also shows a pocket (14) which is used to store help cards

(the flags which provide discipline suggestions, e.g. stop, go, etc.). Note the discussion of Oettinger et al above.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the flags as red, yellow and green. This provides a structure that is simulative of a traffic signal (i.e. stop, caution or think, and go). Regarding claim 14, it would have been further obvious to one having ordinary skill in the pertinent art to add the pocket (14) providing a storage location for the help card having discipline suggestions. Such provides a means for selectively storing items while also providing additional members for enhancing learning.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (6857649) in view of Oettinger et al (4306869), as applied to claim 11 above, and further in view of Leal et al (5482352). The primary reference, as modified above, shows all claimed features of the instant invention with the exception of a pocket providing a storage location for a music compact disc having music that facilitates disciplinary activity.

Leal et al teaches configuring a seating unit with a cover including a pocket (80) providing a storage location for a music compact disc (inside the compact disc player) having music that facilitates disciplinary activity (note that any music is capable of corresponding to a disciplinary activity).

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to further modify the primary reference in view of the teachings of Leal et al by adding the pocket providing a storage location for a music compact disc having music that facilitates disciplinary activity. Such provides a device for providing audible activity to a user and a means for selectively storing the audible device.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (6857649) in view of Oettinger et al (4306869). The primary reference shows all claimed features of the instant invention with the exception of the flags being red, yellow and green. Note the discussion of the primary reference above. Also note that the flags can be removed one at a time during a disciplinary session.

Oettinger et al teaches configuring a learning aid with flags that are red, yellow and green. Note the discussion of Oettinger et al above.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by configuring the flags as red, yellow and green. This provides a structure that is simulative of a traffic signal.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Patton (6857649) in view of McDonald et al (5683137). The primary reference shows all claimed features of the instant invention with the exception of the electronic apparatus

containing sounds that can be used in a disciplinary session. Note the discussion of the primary reference above.

The secondary reference teaches configuring an electronic apparatus (34) as coupled to a storage location (12), the electronic apparatus containing sounds that can be used in a disciplinary session.

It would have been obvious to one having ordinary skill in the pertinent art at the time of the instant invention to modify the primary reference in view of the teachings of the secondary reference by adding an electronic apparatus as coupled to the storage location wherein the electronic apparatus contains sounds that can be used in a disciplinary session. Such provides audible signals to the user of the device in order to enhance the teaching process.

Response to Amendment/Arguments

Applicant's response filed February 23, 2006 has been fully considered. Remaining issues are described in the above sections. Applicant's arguments regarding application of Patton to claims 1, 2, 4, 5, 8, 10, 17 and 19 are not persuasive. Applicant argues that Patton fails to show a plurality of discipline condition indicators. Patton shows such member at 36. Applicant argues that members 36 are used for ornamentation and not for discipline condition indication. Members 36 are capable of use for indicating discipline conditions. In the instant invention, these indicators are merely flags. Members 36 are flags. Applicant's arguments appear directed to the intended use of the flags. A recitation of the intended use of the claimed invention must

result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. There is no claimed structural difference between the claimed invention and the prior art. The members 36 of Patton are clearly capable of performing in the manner of the instant claims.

Regarding application of Oettinger et al to claims 1-3, Applicant argues that a stop flag, a think flag, or a go flag are not shown. Oettinger et al shows plural flags 24-26. Any of the flags can be used as a stop, think or go flag. Applicant's arguments appear directed to the intended use of the flags. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. There is no claimed structural difference between the claimed invention and the prior art. The members 24-26 of Oettinger et al are clearly capable of performing in the manner of the instant claims. It is also seen that Oettinger et al provides simulation of a traffic light with a red flag (stop), caution, i.e. think flag (yellow), and go flag (green). Applicant further argues that the circular discs 24-26 are not flags. Flags are known to be presented in an unlimited number of forms, including circular forms. Flags are merely articles used to attract attention, which is clearly what members 24-26 are used for. Members 24-26 are flags.

Regarding application of Patton in view of Oettinger et al to claim 3, Applicant argues that there is no suggestion in Oettinger et al to modify the members 24-26 to be flags. Oettinger et al is not used to modify its members 24-26 to be flags. Oettinger et al is provided to present the flags of Patton as red, yellow and green. Applicant further argues that Oettinger et al's members 24-26 are magnetic, which is not characteristic of a flag. Magnetic qualities are known to be used in flag construction. Applicant further argues that Patton is used for ornamentation, however the device of Patton is capable of use in the manner claimed. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. Motivation to make the discussed combination is set forth above. Regarding remaining rejections under 35 USC 103, Applicant provides a further statement that Patton does not disclose or suggest discipline condition indicators. This is not persuasive for reasons discussed above.

All prior art rejections have been maintained.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A flag with magnetic means is shown by each of Cooper (6425521) and Hart et al (4694599). A circular flag is shown by Klawiter et al (5762203). Multi-colored flags are shown by Simmons (1133583).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Milton Nelson, Jr. whose telephone number is (571) 272-6861. **The examiner can normally be reached on Monday-Wednesday, and alternate Fridays, 5:30-3:00 EST.**

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Milton Nelson, Jr.
Primary Examiner
Art Unit 3636

mn
May 14, 2006